

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

DAVID F. EVANS, ET AL.,)
Plaintiffs) No. 1:07 CV 739
vs.)
MOTION TO DISMISS OF
THE CITY OF DURHAM,)
NORTH CAROLINA, ET AL.,)
Defendants) MICHAEL B. NIFONG

The defendant, Michael B. Nifong, by his counsel, respectfully shows the Court pursuant to Rules 12(b)(1) and 12(b)(6), Federal Rules of Civil Procedure, and Local Rule 7.3, that:

- A. The Amended Complaint fails to state a claim against Michael B. Nifong upon which relief can be granted.
- B. The plaintiffs lack standing to seek injunctive relief.
- C. All actions of Michael B. Nifong referenced in the Amended Complaint were done in his role as District Attorney and as such are entitled to absolute immunity.

WHEREFORE the defendant Michael B. Nifong respectfully prays the Court for dismissal of all claims against him.

Respectfully submitted,

/s/ James B. Craven III
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CERTIFICATE OF SERVICE

I hereby certify that on January 15, 2009, I electronically filed this motion with the Clerk, through the CM/ECF system which will send notification of such filing to the following:

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Respectfully submitted,

/s/ James B. Craven III

This 15th day of January 2009.